(1) Supreme Court, U.S.
FILED
05-335 JUL 7 - 2005
OFFICE OF THE CLERK

In The Supreme Court of the United States

DON RAY PHINNEY,

Petitioner,

v.

FLORENCE MARIE COOPER,
RUTH JONES, et al.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Don Ray Phinney, Petitioner
Pro se
7657 Winnetka Avenue, #451
Canoga Park, CA, 91306
(818) 594-7391

July 7, 2005

QUESTIONS PRESENTED FOR REVIEW

1. Whether or not, under judicial immunity, a federal judge can corruptly decide a case before the court by illegally, deliberately, and intentionally falsify and lie about another federal judge's Order by falsely stating that a judge ruled the complaint is "clearly barred" wheras a judge had actually ruled that the said complaint "is not time-barred."

2. Whether or not such an Act committed by a federal judge against another federal judge, thus destroying Petitioner's right to go to trial, in direct violation of the Canons of Judicial Conduct as stated in the ABA Model Code of Judicial Conduct (1990), constitutes a violation of Petitioner's Due Process Rights guaranteed under the Fourteenth Amendment of the Amendment of the U.S. Constitution.

3. Whether or not Petitioner is entitled to go to trial if the trial (with $150 million in alleged damages) was cancelled by a federal judge that falsified and lied about the Order of another federal judge that clearly states that the intent

of the ruling is to allow Petitioner to go to trial.

4. Whether or not federal judges and court personnel can avoid responsibility for their corrupt acts in connection with cases before their courts by hiding behind the cloak of judicial immunity.

LIST OF PARTIES

All parties appear on the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Don Ray Phinney, Petitioner
Pro se
7657 Winnetka Ave. #451
Canoga Park, Ca 91306
(818) 594-7391

Debra W. Yang
United States Attorney
Leon W. Weidman
Assistant U.S. Attorney
Chief, Civil Division
Robert I. Lester
Assistant U.S. Attorney
Room 7516, Federal Building
300 North Los Angeles Street
Los Angeles, CA 90012
(213) 894-2464

Attorneys for Federal Respondents Hon. Florence-Marie Cooper and U S. Supreme Court Clerk Ruth J nes

Solicitor General of the United States
Room 5614
Department of Justice
950 Pennsylvania Ave. N.W.
Washington D.C. 20530-0001

TABLE OF CONTENTS

Questions Presented for Review i

List of Parties iii

Table of Contents v

Table of Authorities vi

Opinions Below 1

Jurisdiction 1

Constitutional and Statutory Provisions Involved 1

Statement of the Case 3

Reasons for Granting the Petition . . 5

Conclusion 9

TABLE OF AUTHORITIES CITED

Cases

Agency Holding Corp. v. Malley-Duff & Assocs.
107 S. Ct., 2759, 2767 (1987) 3

Mireles v. Waco
502 U.S. 9, 9-10, 112 S.Ct. 116 L. Ed. 2d 9 (1991) 4

United States v. Hoaton
693F.2d 857, 858 (9th Cir. 1992). . . 5

Moore v. Brewster
96 F.3d 1240,1243-44 (9th Cir. 1196). 6

Atkinson-Baker & Son Assoc. Inc., v. Kelts
7 F.3d 1452, 1454-55 (9th Cir. 1993). 6

Statutes and Rules

28 U.S.C. 1254(1) 1

28 U.S.C. 2101(e) 7

Other

ABA Model Code of Judicial Conduct (1990) 7-8

OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Ninth Circuit is reprinted in the Appendix hereto at Page A-1.

JURISDICTION

The date on which the United States Court of Appeals decided Petitioner's case was on April 8, 2005. The Supreme Court juris-diction is invoked under 28 U.S.C. Section 1254(1).

This petition was filed within (90) days of the judgment of the Court of Appeals.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Fourteenth Amendment of the Constitution of the United States:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the states wherein they reside... No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States...nor

deny to any person within its jurisdiction the equal protection of the laws.

No state...shall deprive any person of life, liberty, or property, without due process of law.

STATEMENT OF THE CASE

On February 5, 2004 Petitioner filed a RICO Complaint alleging that on February 8, 2000 Judge Cooper falsified and lied about Judge Davies prior Order allowing the Petitioner to go to trial in order to cancel the trial and cover up the alleged $150 Million damages to Petitioner and that these damages were caused by the First American Corporation, et al., by stating that Judge Davies ruled that the complaint is "clearly barred" whereas Judge Davies had actually ruled that the complaint "is not time-barred". (Petitioner's Complaint filed 2-5-04, Exhibit B thereto, page 1.)

Petitioner also alleged in the RICO Complaint that on April 15, 2002 U.S. Supreme Court Clerk Ruth Jones forged a document purporting to be from the United States Supreme Court denying the Petitioner's Petition.

However, contrary to the facts and issues in the February 5, 2004 RICO Complaint, which states the Acts occurred between February 8, 2000 and April 15, 2002, (See *Agency Holding Corp. v. Malley- Duff & Assocs.* 107 S. Ct., 2759,2767 (1987)) Judge Feess falsified and lied about the complaint by stating in the Statement Of Fact in

his ruling on July 12, 2004 that the facts and issues occurred "in the late 1960's".

Then, on August 31, 2004, Judge Feess falsified and lied about the complaint by stating in the Statement of Facts in his ruling that the facts and issues occurred "in the early 1970's".

Additionally, the only Respondents involved in the Petitioner's February 5, 2004 RICO Complaint are Florence-Marie Cooper, Ruth Jones, and Does 1 through 10, Inclusive, and no others. However, on July 12, 2004 and August 31, 2004, Judge Feess in the Statement Of Facts states that the alleged facts and issues in Petitioner's complaint occurred by "Kathy Tyrcz".

Clearly, the evidence shows that on July 12, 2004, Judge Feess falsified and lied about Judge Davies Order in order to deprive Petitioner of his right to go to trial with $150 Million in alleged damages, and to cover up the alleged 2002 Act of Ruth Jones and the alleged 2000 Act of Florence Marie Cooper, illegally, under judicial immunity.

In addition, on August 31, 2004, Judge Feess, illegally, under judicial immunity, (See *Mireles v. Waco*, 502 U.S. 9,9-10,112 S. Ct. 116 L. Ed.2d9 (1991), falsified and lied about the facts and

issues in the Petitioner's 2004 complaint in order to prevent Judge Cooper from being exposed at trial in 2004 for falsifying and lying about Judge Davies' Order, in order to cover up the alleged facts and issues in the 2004 RICO Case, causing fundamental rights afforded to all under our system of jurisprudence to be violated.

On October 28, 2004 Petitioner filed an appeal to the United States Court of Appeals for the Ninth Circuit.

On April 8, 2005 the Ninth Circuit denied Petitioner's appeal.

Finally here, on July 7, 2005, Petitioner filed this appeal to the Supreme Court of the United States.

REASONS FOR GRANTING THE PETITION

Petitioner submits, it is clear that the Ninth Circuit Court of Appeals abused it discretion claiming: "Appellees motion for summary affirmance is granted because a review of appellant's opening brief indicates that the questions raised in this appeal are so insubstantial as not to require further argument. See United States v. Hoaton, 693 F.2d 857, 858 (9th Cir.1992) (Per curiam).

Accordingly, we summarily affirm the district court's judgment.

All other pending motions are denied as moot.

AFFIRMED."

The questions raised are not insubstantial. The issue for determination by this Court is the extent to which, if at all, federal judges and clerks of federal courts will be granted valid immunity for fraudulent acts they commit in the direct performance of their duties. It is necessary for the Supreme Court to speak out on this issue and determine with finality that federal judges and clerical employees are held to a high standard in the performance of their duties and may not hide under the cloak of immunity when they commit fraud in the disposition and handling of cases before the federal courts. See Moore v. Brewster, 96F.3d 1240, 1243-44 (9th Cir. 1196) Atkinson-Baker & Son Assoc. Inc., v. Kelts, 7 F.3d 1452, 1454-55 (9th Cir. 1993.)

This court has "judicial discretion" and "compelling reasons" to justify this Court to hear this case because clearly here the court of appeals deviated from "normal appellate practice" and requires 'immediate

determination in this Court. See 28 U.S.C. 2101(e)." Petitioner submits this case should be settled by this Court because a United States Court of Appeals has entered a decision in conflict with the decision of a United States district trial court on the same important matter, and under Supreme Court Rule 10(a)(b) and (c), this important federal question "...has not been, but should be, settled by this Court...".

ABA Model Code of Judicial Conduct (1990)

Preamble

Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts of judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

CANON I: A Judge shall uphold the Integrity and Independence of the Judiciary

A. An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this code are to be construed and applied to further that objective.

CANON 2: A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities

B. A judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

Clearly, violations of these ethics are outside the bounds of what the

courts should view as protected judicial acts within a judge's judicial capacity.

Also equally as evident should be the evidence of such acts, if proved true, should be a question for the trier of fact (be it judge or jury) as to the question of "IF" such acts, as proved, do equate to acts that are, in fact, protected absolutely within a judge's judicial capacity. Or if such acts fall outside the accepted legal bounds of what is required by our Constitution and by our society in effecting justice within our legal system.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Don Ray Phinney, Petitioner
Pro se
7657 Winnetka Ave., #451
Canoga Park, CA 91306
(818) 594-7391

July 7, 2005

Index to Appendices

A. Ninth Circuit Order of April 8, 2005 (Memorandum) A-1

B. Ninth Circuit Order of April 8, 2005 (Judgment) B-1

C. District Court Order of August 31, 2004 . . . . . C-1

D. District Court Order of July 12, 2004 . . . . . D-1

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DON RAY PHINNEY, Plaintiff-Appellant, v. FLORENCE MARIE COOPER; et al., Defendants-Appellees.	No. 04-56899 D.C. No. CV-04-00841-GAF **JUDGMENT**

Appeal from the United States District Court for the Central District of California, Los Angeles.

This cause came on to be heard on the Transcript of the Record from the United States District Court for the Central District of California, Los Angeles and was duly submitted.

On consideration whereof, it is now here ordered and adjusted by this Court, that the judgment of the said District Court in this cause be, and hereby is **AFFIRMED**.

Filed and entered Friday, April 8, 2005.

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

DON RAY PHINNEY, Plaintiff-Appellant, v. FLORENCE MARIE COOPER; et al., Defendants-Appellees.	No. 04-56899 D.C. No. CV-04-00841-GAF MEMORANDUM Filed April 8, 2005

Appeal from the United States District Court for the Central District of California Gary A. Feess, District Judge, Presiding

Submitted April 4, 2005

Before: KOZINSKI, HAWKINS, and CLIFTON, Circuit Judges.

Appellees' motion for summary affirmance is granted because a review of appellant's opening brief indicates that the questions raised in this appeal are so insubstantial as not to require further argument. See *United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam).

Accordingly, we summarily affirm the district court's judgment.

All other pending motions are denied as moot.

AFFIRMED.

---

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 04-0841-GAF Date: August 30, 2004
Title: Phinney v. Cooper, et al.

THE HONORABLE GARY ALLEN FEESS, JUDGE

Marilyn Morris	None Present
Courtroom Deputy Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF - None Present	ATTORNEYS PRESENT FOR DEFENDANT - None Present

PROCEEDINGS: (In Chambers) DOCKETED AUG 31 2004

I.
INTRODUCTION

The Court is in receipt of and has considered Plaintiff Don Ray Phinney's ("Plaintiff" motion for reconsideration of this Court's July 9, 2004 order granting Defendants' opposition, and Plaintiff's reply the eto. For the reasons discussed more fully below, Plaintiff's motion is DENIED.

II.
STATEMENT OF FACTS

Plaintiff, in the early 1970's, began a decades-long series of litigations against several entities who purportedly conspired to deprive him of a

successful music career. His efforts continue today. He first sued parties in Tennessee federal court. Then, in 1992, he filed suit in the Central District of California. Phinney v. First Am.Nat'l Bank, et al., CV 92-4823-JGD(ex). In that action, the Honorable John G. Davies dismissed Plaintiff's complaint. In 1999, Plaintiff brought yet another suit, this time before the Honorable Florence-Marie Cooper, a federal district court judge for the Central District of California, alleging RICO violations against the same parties to the prior litigations as well as the Tennessee federal judges who ruled against him and Kathy Tyrcz, a member of the clerk's office of the United States Supreme Court. Phinney v. First Am.Nat'l Bank, et al., CV 99-6421-FMC (Rcx). Judge Cooper dismissed that action on February 8, 2000. Further, on March 10, 2000, Judge Cooper issued an order declaring Plaintiff a vexatious litigant. Plaintiff appealed the decisions, but the Ninth Circuit affirmed Judge Cooper's dismissal of the case and order declaring Phinney vexatious. Phinney v. First Am.Nat'l Bank, et al., 10 Fed.Appx. 555, 2001 WL 577031(9th Cir. May 29, 2001) (unpub.), cert.denied, 535 U.S. 987 (2002).

In November 2001, after the Ninth Circuit uphelf Judge Cooper's ruling, Plaintiff filed a petition with the U.S. Supreme Court for certiorari - a petition that was denied. Ruth Jones, Clerk of the United States Supreme Court, received the petition. According to Plaintiff, Jones intentionally withheld the petition without "providing copies to Chief Justice Rehnquist and the other Justices" (Opp. at 3; see also Compl.¶9(b), Exhs. C & D thereto.) Plaintiff also contends that Jones proceeded to forge a letter "purporting to be from the Clerk of the United States Supreme Court notifying Plaintiff that his Petition was denied when in fact the Supreme Court Justices were not allowed by Jones to receive and rule on Plaintiff's Petition themselves." (Compl.¶9(b), Exhs. C & D thereto).

In addition, Plaintiff insists that Judge Cooper, in her February 8, 2000 order dismissing Plaintiff's complaint, misrepresented Judge Davies's order on the issue of the statute of limitations. (Comp.¶9(a) Exhs. A & B thereto). Plaintiff maintains that Judge Cooper's purported misrepresentation was a fraud designed to prevent Plaintiff's case from going to trial and that Jones acted "to prevent the Cooper fraud from being exposed." (Compl.¶10). Further, Judge Cooper and Jones allegedly "received income, derived, directly or indirectly, from a pattern of racketeering activity."

(Id. ¶13). Plaintiff purportedly suffered hundreds of millions of dollars in damages. (Id. ¶¶ 14-15).

On that basis, Plaintiff sued Judge Cooper and Ruth Jones for RICO violations, asserting that Judge Cooper intentionally and fraudulently falsified another federal judge's order and that Jones fraudulently withheld a petition from the Justices of the Unites States Supreme Court and forged a letter denying his petition. Defendants Judge Cooper and Ruth Jones moved to dismiss the action with prejudice, pursuant to Federal Rule of Civil Procedure 12(b)(6), on the basis that Judge Cooper and Ruth Jones are entitled to absolute judicial immunity and absolute quasi-judicial immunity respectively. The Court agreed and dismissed Plaintiff's complaint with prejudice. Plaintiff now seeks reconsideration of that order.

III.
DISCUSSION

Rule 7-18 of the Local Rules of the Central District of California permits a party to move for reconsideration of an order. It provides that:

> A motion for reconsideration of the decision on any motion may be made only on the grounds of (a)a material difference in

> fact or law from that presented to the Court before such decision that in the exercise of reasonable diligence could not have been known to the party moving for reconsideration at the time of such decision, or (b)the emergence of new material facts or a change of law occurring afater the time of such decision, or (c)a manifest showing of a failure to consider material facts presented to the Court before such decision. No motion for reconsideration shall in any manner repeat any oral or written argument made in support of or in opposition to the original motion.

Id. (emphasis added).

The Court cannot grant reconsideration unless the moving party demonstrates that one of the circumstances required by Local Rule 7-18 exist. Plaintiff seeks reconsideration, but fails to satisfy any of the requirements of Local Rules 7-18. Plaintiff offers no material difference in law or fact that could not have been known at the time of decision. Nor does Plaintiff present any new facts or changes in the law occurring after this Court's decision. Further, Plaintiff

has failed to make a manifest showing of the failure of the Court to consider material facts presented before it rendered its decision. The true thrust of Plaintiff's motion is that the Court erred in its reasoning - a position that cannot be countenanced on a motion for reconsideration. (See e.g. Mot. at 6 ("I can agree with Judge Feess with respect to the latter sentence indicating that judicial immunity applies to an error made by a judge. I cannot agree that judicial immunity protects a judge from fraud.")). Accordingly, the motion for reconsideration is **DENIED**.

IV.
CONCLUSION

For the foregoing reasons, Plaintiff's motion is **DENIED**.

Furthermore, the Court notes that the instant motion is yet another attempt by Plaintiff to persist in meritless litigation that has spanned the course of thirty years and has been presented, in one form or another, in Courts across the country. Accordingly, if Plaintiff is under the impression that this Court will entertain endless motions for reconsideration that fail to satisfy one of the mandatory elements of Local Rule 7-18 or, for that matter, any other frivolous filings, Plaintiff is

mistaken. This Court will not hesitate to use its substantial powers to sanction or to enter restrictive pre-filing orders against vexatious litigants with abusive and lengthy histories of litigation. Plaintiff may wish to contemplate that prospect as he chooses his future course of conduct in this case.

IT IS SO ORDERED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES - GENERAL

Case No. CV 04-0841-GAF Date: July 9, 2004
Title: Phinney v. Cooper, et al.

THE HONORABLE GARY ALLEN FEESS, JUDGE

Marilyn Morris	None Present
Courtroom Deputy Clerk	Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF - None Present	ATTORNEYS PRESENT FOR DEFENDANT - None Present

PROCEEDINGS: (In Chambers) DOCKETED JUL 12 2004

I.
INTRODUCTION

Plaintiff Don Ray Phinney ("Plaintiff") brings this action against the Honorable Florence-Marie Cooper ("Judge Cooper"), a district court judge in the Central District of California, and Ruth Jones ("Jones"), Clerk of the United States Supreme Court, pursuant to the Racketeering Influenced and Corrupt Organization Act ("RICO"). Plaintiff charges that Judge Cooper intentionally and fraudulently falsified another

federal judge's order and that Jones fraudulently withheld a petition from the Justices of the United States Supreme Court and forged a letter denying his petition. Defendants Judge Cooper and Jones move to dismiss the action with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(b) because Judge Cooper and Jones are entitled to absolute judicial immunity and absolute quasi-judicial immunity respectively.

The Court concludes that Defendants' motion is appropriate for disposition without oral argument and therefore **VACATES** the hearing presently scheduled for July 12, 2004. See FED.R. Civ.P.78; Local Rule 7-15. For the reasons discussed more fully below, the Defendants' motion is **GRANTED** and Plaintiff's complaint is **DISMISSED WITH PREJUDICE**.

II.
STATEMENT OF FACTS

Plaintiff, in the late 1960's, began a decades-long series of litigations against several entities who purportedly conspired to deprive him of a successful country music career. He first sued those parties in federal court in Tennessee. Then, in 1992, he filed suit in the Central District of California. Phinney v. First Am.Nat'l

Bank, et al. CV 92-4823-JGD(Ex). In that action, Judge John G. Davies dismissed Plaintiff's complaint. In 1999, Plaintiff brought yet another suit, this time before Judge Cooper, alleging "RICO violations against the same parties to the prior litigations as well as the Tennessee federal judges who ruled against him and Kathy Tyrcz, a member of the clerk's office of the United States Supreme Court. Phinney v. First Am.Nat'l Bank, et al., CV 99-6421-FMC (Rcx) Judge Cooper dismissed that action on February 8, 2000. Further, on March 10, 2000, Judge Cooper issued an order declaring Plaintiff a vexatious litigant. Plaintiff appealed the decisions, but the Ninth Circuit affirmed Judge Cooper's dismissal of the case and order declaring Phinney vexatious. Phinney v. First Am.Nat'l Bank, et al., 10 Fed.Appx. 555, 2001 WL 577031 (9th Cir. May 29, 2001)(unpub.), cert. denied, 535 U.S. 987 (2002).

In November 2001, after the Ninth Circuit upheld Judge Cooper's ruling, Plaintiff filed a petition with the U.S. Supreme Court for certiorari - a petition that was denied. Jones, Clerk of the United States Supreme Court, received the petition. Plaintiff alleges that Jones intentionally withheld the petition without "providing copies to Chief Justice Rehnquist and

and the other Justices." (Opp. at 3; see also Compl.¶9(b), Exhs. C & D thereto). Plaintiff further alleges that Jones proceeded to forge a letter "purporting to be from the Clerk of the United States Supreme Court notifying Plaintiff that his Petition was denied when in fact the Supreme Court Justices were not allowed by Jones to receive and rule on Plaintiff's Petition themselves." (Compl.¶9(b), Exhs. C & D thereto.)

Plaintiff also contends that Judge Cooper, in her February 8, 2000 order dismissing Plaintiff's complaint, misrepresented Judge Davies order on the issue of the statute of limitations. (Compl.¶9(a), Exhs. A & B thereto).[1] Plaintiff contends that Judge Cooper's purported misrepresentation was a fraud designed to prevent Plaintiff's case from going to trial. According to Plaintiff, Jones acted "to prevent the Cooper fraud from being exposed."

---

[1]The Court takes judicial notice of Judge Cooper's and Judge Davies's orders discussed above. Judge Cooper did *not* discuss Judge Davies's orders in h er order dismissing Plaintiff's action or in her order declaring him a vexatious litigant. In any event, Plaintiff's case was dismissed by Judge Davies and not permitted to proceed in this jurisdiction.

(Compl.¶10). Further, Judge Cooper and Jones allegedly "received income, derived, directly or indirectly, from a pattern of racketeering activity." (Id. ¶ 13). Plaintiff seeks hundreds of millions of dollars in damages. (Id. ¶¶ 14-15.)

III.
DISCUSSION

A.Legal Standard For a Motion to Dismiss

A Rules 12(b)(6) motion tests the legal sufficienty of the claims asserted in the complaint. FED.R.CIV.P.12(b)(b) ("FRCP"). A court may not discuss a complaint for failure to state a claim "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of its claim which would entitle it to relief." Conley v. Gibson, 355 U.S. 41, 45-46 (1957). In other words, a Rule 12(b)(6) dismissal is proper only where there is either a "lack of a cognizable legal theory" or "the absence of sufficient facts alleged under a cognizable legal theory." Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1988); see also Haddock v. Bd. Of Dental Examiners of Cal., 777 F.2d 462, 464 (9th Cir. 1985). In deciding a motion to dismiss for failure to state a claim, the court must accept all factual allegations pleaded in the complaint as true, and must construe them and draw

all reasonable inferences from them in favor of the nonmoving party. Cahill v. Liberty Mut.Ins.Co., 80 F.3d 336, 337-38 (9th Cir. 1996).

Because factual challenges have no bearing under Rule 12(b)(6), generally speaking, the court may not consider material beyond the pleadings in ruling on a motion to dismiss for failure to state a claim. There are, however, two exceptions to this general rule which do not demand converting the motion to dismiss into one for summary judgment. Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001). First, a court may consider material that is either attached to the complaint or material upon which the complaint relies, provided the material's authenticity is not contested. Id. Second, under FED.R.EVID. 201, a court may take judicial notice of matters of public record if the facts are not subject to reasonable dispute. Id. The Court need not accept as true allegations in Plaintiffs' complaint that contradict matters properly subject to judicial notice. Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir.2000).

B.PLAINTIFF'S CLAIM AGAINST JUDGE COOPER MUST BE DISMISSED BECAUSE JUDGE COOPER IS ABSOLUTELY IMMUNE FROM CIVIL LIABILITY

The action against Judge Cooper is barred by absolute judicial immunity. Judges are absolutely immune from civil liability for damages for their judicial acts. Mireles v. Waco, 502 U.S.9, 9-10 (1991)(per curiam).[2] Judicial immunity protects "judicial independence by insulating judges from vexatious actions prosecuted by disgruntled litigants." Forrester v. White, 484 U.S. 219, 225 (1988). "It is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself." Mireles, 502 U.S. at 10. Thus, judicial immunity is overcome in only two sets of circumstances. A judge is not immune from liability for nonjudicial actions, i.e, action not taken in the judge's judicial capacity. Id. at 11. Second, a judge is not

---

[2] Further, federal judges are absolutely immune from claims for declaratory, injunctive or other equitable relief arising from their judicial acts. Moore v. Brewster, 96 F.3d 1240, 1243 (9th Cir.1996); Atkinson-Baker & Assocs., Inc. v. Kolts, 7 F.3d 14652, 1454 (9th Cir. 1993) (per curiam); Mullis v. United States Bankr. Court, 828 F.2d 1365, 1388, 1391-92 (9th Cir.1987).

immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction. Id. at 12.

The action performed by Judge Cooper was a judicial act. "Whether an act by a judge is a judicial" one relate(s) to the nature of the act itself, i.d., whether it is a function normally performed by a judge, and to the expectations of the parties, meaning whether the parties dealt with the judge in his or her judicial capacity. Stump v. Sparkman, 435 U.S. 349, 362 (1978). Circuits have expanded the Stump analysis to determine whether an action is judicial. Those courts focus on whether (1) the precise act is a judicial function; (2) the events occurred in the judge's chambers; (3) the controversy centered around a case then pending before the judge; and (4) the events at issues arose directly and immediately out of a confrontation with the judge in his or her official capacity. Ashelman v. Pope, 793 F.2d 1072, 1075-76 (9th Cir. 1986)(en banc). Judge Cooper's act of interpreting the effect of a prior order in the context of a pending action is a "judicial" act.

Plaintiff miscontrues the meaning of the "nonjudicial act" exception to the doctrine of judicial immunity and is clearly operating under a fundamental misunderstanding of the law. Plaintiff

alleges that "fraud is not a judicial act." (Opp. at 10). Even if the actions were performed out of malice of fraud, it cannot be said that the actions are "nonjudicial." If judicial immunity is to have force, it means that a judge "will not be deprived of immunity because that the action he took was in error ... or was in excess of his authority." Stump at 356. See also Forrester, 484 U.S. at 227 (a judicial act "does not become less judicial by virtue of an allegation of malice or corruption of motive"). Accordingly, the relevant inquiry is the "nature" and "function" of the act, not the "act itself." Stump, 435 U.S. at 362. Whether or not Plaintiff's allegations of fraud are true, Judge Cooper's actions unquestionably fall within the category of "judicial" acts.

In addition, Judge Cooper had jurisdiction over Plaintiff's action. In interpreting whether an action lacks complete jurisdiction for the purpose of detemrining whether judicial immunity has been abrogated, "a clear absence of all jurisdiction means a clear lack of all subject matter jurisdiction." Mullis v. United States Bankr.Court, 828 F.2d 1385, 1389 (9th Cir.1987). In the case before Judge Cooper, Plaintiff asserted RICO claims. Accordingly, Judge Cooper had subject matter jurisdiction over the claims pursuant to

28 U.S.C. § 1331. Thus, it cannot be said that the decision to dismiss Plaintiff's complaint was made with "clear absence of all jurisdiction."

Plaintiff also misinterprets the law with regard to the "clear absence of all jurisdiction" exception to judicial immunity. Plaitniff argues, without supporting citation, that "a judge cannot be guilty of fraud and corruption and be within his or her jurisdiction." (Opp. at 10). Being most generous, what Plaintiff alleges are, at the very most, errors or acts in excess of jurisdiction, not acts in the clear absence of all jurisdiction. The Supreme Court has illustrated the distinction between an act in the clear absence of jurisdiction and an act in excess of jurisdiction with this example: if a probate judge, with jurisdiction over only wills and estates tries a criminal case, he would be acting in the clear absence of jurisdiction. If a criminal court convicts a defendant for a non-existent crime, the judge would merely be acting in excess of his jurisdiction and would be immune. Stump, 435 U.S. at 357 n.7. Plaintiff's allegations do not destroy absolute judicial immunity because they do not show clear absence of all jurisdiction as proscribed by the law.

C. PLAINTIFF'S CLAIM AGAINST JONES MUST BE DISMISSED BECAUSE JONES IS ENTITLED TO ABSOLUTE QUASI-JUDICIAL IMMUNITY

Acting in her capacity Clerk of the United States Supreme Court, Defendant Jones is entitled to absolute quasi-judicial immunity. "Court clerks have absolute quasi-judicial immunity from damages...when they perform tasks that are an integral part of the judicial process." Mullins, 828 F.2d at 1390. The commencement of an action by filing a complaint or petition is a basic and integral part of the judicial process. See, e.g., FED.R.CIV.P.3 (stating that a civil action is commenced by filing a complaint). The clerk of the court and its deputy clerks are the officials through whom such filing is done. See, e.g., SUP.CT.R.29. Consequently, clerks qualify for quasi-judicial immunity unless they act in the clear absence of all jurisdiction. Mullis, 828 F.2d at 1390. As with judicial immunity, a mistake or an act in excess of jurisdiction does not abrogate quasi-judicial immunity. Id.

Plaintiff alleges that Defendant Jones is not entitled to immunity because she was not participating in the judicial process when she "intentionally, fraudulently, and corruptly" thwarted Plaintiff's petition to the Supreme Court. (Opp. at 10).

Again, Plaintiff has not, and indeed cannot, cite any supporting authority for this misstatement of the law. In Moore v. Brewster, 96 F.3d 1240 (9th Cir. 1996), the clerk was still protected by quasi-judicial immunity even if allegations that he deceived the plaintiff regarding the status of a bond and improperly held hearings to assess costs were true. Id. at 1244. Therefore, Defendant Jones's conduct is shielded by quasi-judicial immunity whether or not Plaintiff's allegations of fraud are true.

IV.
CONCLUSION

Because Defendants are immune from suit under the circumstances alleged here, Defendants' motion is **GRANTED**. Furthermore, because amendment would be futile, Plaintiff's complaint is **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.